

Amendment No. 1 to SB2237

Bell

Signature of Sponsor

**AMEND Senate Bill No. 2237\***

**House Bill No. 2355**

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 3, Part 13, is amended by adding the following as a new section:

It is the duty and authority of the department of commerce and insurance to implement and administer a registration program as part of a regulatory scheme for the practice of bail bonding under title 40, chapter 11.

SECTION 2. Tennessee Code Annotated, Title 40, Chapter 11, Part 1, is amended by adding the following as a new section:

As used in this chapter, unless the context otherwise requires:

(1) "Available capacity" is a professional bondsman's capacity reduced by the total amount of bail, expressed in dollars, which the professional bondsman has outstanding and from which the professional bondsman has not been released;

(2) "Capacity" is the total amount of bail, expressed in dollars, on which a professional bondsman may act as surety;

(3) "Department" means the department of commerce and insurance;

(4) "Equity in real estate" is determined by taking the fair market value of the real estate and subtracting from that value all outstanding liens and encumbrances. For purposes of establishing fair market value, either the county property assessor's appraisal or an opinion of value from a licensed real estate broker may be used;

(5) "Professional bonding agent" means, but is not limited to, a professional bondsman acting individually, or representatives, or employees of any person, firm, partnership, or officers and directors of a corporation, engaged for profit in the business of furnishing bail, making bonds, or entering into undertakings as surety in criminal proceedings, or for the appearance of persons charged with any criminal offense or violation of law or ordinance punishable by fine, imprisonment, or death. "Professional bonding agent" also means persons licensed as limited insurance representatives by the department of commerce and insurance pursuant to title 56, chapter 6, part 1 and the rules of that department; and

(6)

(A) "Professional bondsman" means any person, firm, partnership, or corporation engaged for profit in the business of furnishing bail, making bonds, or entering into undertakings, as surety, in criminal proceedings, or for the appearance of persons charged with any criminal offense or violation of law or ordinance punishable by fine, imprisonment, or death, before any of the courts of this state, including municipal courts, or securing the payment of fines, judgments, or damages imposed and of costs assessed by those courts upon preliminary or final disposition thereof; and

(B) "Professional bondsman" or "bondsman" includes the agents, representatives, or employees of a professional bondsman, or those acting for the bondsman, whether with or without compensation or salary. The business of a professional bondsman is limited to the acts, transactions, and undertakings enumerated in subdivision (6)(A) and to no others.

SECTION 3. Tennessee Code Annotated, Section 40-11-106(b)(3), is amended by deleting the subdivision and substituting the following:

This subsection (b) shall not be used to prevent a bail bonding agency from posting bond for any individual when the professional bondsman has previously been approved and authorized to make bonds and the professional bondsman has been so authorized by the department and the presiding judge.

SECTION 4. Tennessee Code Annotated, Section 40-11-122, is amended by designating the existing language as subsection (a) and adding a new subsection:

(b) For a bail bond secured by a professional bail bondsman pursuant to subsection (a)(3), the bondsman shall provide the court with an electronic mail address for electronic service of a scire facias and must provide a copy of any contract or agreement with the defendant regarding the bail bond upon the request of the court or the district attorney.

SECTION 5. Tennessee Code Annotated, Section 40-11-124, is amended by adding the following as a new subsection:

(c) Notwithstanding the issuance by an association of a guaranteed arrest or bail bond certificate, as defined in § 40-11-145, professional bondsmen must be registered with the department pursuant to part 3 of this chapter. This subsection (c) does not prohibit the court of record under subsections (a) and (b) from establishing further standards that a professional bondsman must meet to practice within the jurisdiction.

SECTION 6. Tennessee Code Annotated, Section 40-11-125, is amended by deleting the section and substituting the following:

(a) In addition to the requirements of part 3 of this chapter regulating professional bondsmen, the department may sanction a professional bondsman or withhold, withdraw, or suspend the professional bondsman's bonding privileges, if, after investigation, it appears that the professional bondsman:

(1) Has been guilty of violating any of the laws of this state relating to bail bonds;

(2) Has a final judgment of forfeiture entered against the professional bondsman which remains unsatisfied;

(3) Is guilty of professional misconduct as described in § 40-11-126;

(4) If applying for approval as a professional bondsman, has been convicted in any state of the United States of two (2) or more misdemeanors which are equivalent to Class A or B misdemeanors in this state; provided, however, that the misdemeanor convictions must have occurred within five (5) years of the date the application for approval is filed;

(5) Has implemented a system for bond premium payment plans, excluding payment by credit cards, or has written a bail bond without payment of the full premium fee;

(6) Has placed funds into a commissary fund, or other similar fund established by a correctional facility from which an inmate housed in the facility may purchase products, in exchange for referring other persons to the bondsman for the purpose of writing bonds;

(7) Has offered financial incentives to an inmate housed in a correctional facility in exchange for the inmate referring the bondsman to persons outside of the jail population for the purpose of writing bonds;

(8) Has impersonated a law enforcement officer of the United States, this state, or any of its political subdivisions;

(9) Has failed to notify the district attorney and sheriff of the bondsman's intent to enter a private property to apprehend, return, or surrender a forfeiting defendant;

(10) Has failed to complete all continuing education requirements under part 4 of this chapter, which includes, but is not limited to, obtaining and maintaining an enhanced carry permit if the professional bondsman carries a firearm in an official capacity;

(11)

(A) Has apprehended, returned, or surrendered a forfeiting defendant more than once between the time the defendant's bail is set at the defendant's first appearance before a general sessions court judge or judge of a court of record and the defendant's subsequent appearance for the same charge before the court;

(B) Notwithstanding subdivision (a)(11)(A) to the contrary, a judge in either court may authorize the apprehension, return, or surrender of a forfeiting defendant more than once during the period prescribed in subdivision (a)(11)(A) upon a petition by a bondsman and subsequent finding by the judge that another such apprehension, return, or surrender is reasonable and necessary to ensure the defendant's return to court;

(12) Has used predatory tactics in representing a defendant, as determined by the department pursuant to its receipt of a complaint alleging the use of such tactics by a member of the judiciary, a district attorney or representative of such person, or any other person involved in the bonding process. As used in this subdivision (a)(12), "predatory tactics" means the intentional exploitation of others for personal financial gain;

(13) Has paid a person employed either directly or indirectly with the courts to refer persons to the professional bondsman for hire, as determined by the department;

(14) Has failed to pay bond forfeitures when required to do so by a court within thirty (30) days or more;

(15) Has failed to appear in court with the bondsman's client as part of a judicial proceeding when required by the court; or

(16) Has failed to timely remit payment for any taxes imposed by the federal government, a state government, or other political subdivision of state government.

(b) The department shall promulgate rules to establish a schedule designating the civil penalty that may be assessed for a violation of the minimum standards established in this section.

(c) If the department sanctions, withholds, withdraws, or suspends a professional bondsman under this section, then the department must notify the professional bondsman in writing of the action taken. The notice must include a copy of the charges resulting in the department's action. The professional bondsman has the right to the hearing of a contested case under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, upon the receipt of such notice.

(d) If the department withholds, withdraws, or suspends a professional bondsman under this section, then the department shall remove the professional bondsman's name from the approved list and notify all courts in which the professional bondsman is approved to practice.

(e) Any applicant for approval whose application has been denied, withheld, suspended, or revoked may seek review of the department's decision by requesting a contested case hearing, which is conducted pursuant to the Uniform Administrative Procedures Act.

(f)

(1) Notwithstanding the department's authority under this section, a court may deny, withhold, suspend, or revoke an approved professional bondsman's bonding privileges in such court upon the court's determination that the professional bondsman's conduct is detrimental to the bondsman's client or is disruptive to the court or court proceedings.

(2) The department must be notified of the action of the court, and the department must note the action taken by the court on the approved list in accordance with § 40-11-314.

(3) Any bondsman whose bonding privileges have been denied, withheld, suspended, or revoked under subdivision (f)(1) has the right of appeal to the next highest court having criminal jurisdiction, and the appeal shall be heard de novo.

(4) Any disciplinary action taken against a professional bondsman under this section must be posted to the registry on the department's website in accordance with § 40-11-314(i) within five (5) business days of the time such action is reported to the department.

SECTION 7. Tennessee Code Annotated, Section 40-11-127, is amended by deleting the section and substituting the following:

Upon a finding by a district attorney general that a professional bondsman has violated any provision of this chapter, the district attorney general shall file a complaint with the court that details all violations alleged to have been committed by the professional bondsman for further action, if necessary, by the court.

SECTION 8. Tennessee Code Annotated, Section 40-11-133(a), is amended by deleting the language "bail bondsman or surety" and substituting the language "professional bondsman".

SECTION 9. Tennessee Code Annotated, Section 40-11-133(b), is amended by deleting the language "bail bondsman or surety" and substituting the language "professional bondsman".

SECTION 10. Tennessee Code Annotated, Section 40-11-133(d), is amended by deleting the language "Any approved bail bondsman in good standing" and substituting the language "Any approved professional bondsman in good standing with the court".

SECTION 11. Tennessee Code Annotated, Section 40-11-139, is amended by deleting subsections (b) and (c) and substituting:

(b) After the expiration of sixty (60) days from the date surety is served with scire facias or scire facias is returned to the clerk unserved or undelivered, the court shall enter judgment for the state against the defendant and the defendant's sureties for the amount of the bail and costs of the proceedings.

(c) The court may stay the execution of the final forfeit and any enforcement proceedings for a further thirty (30) days.

(d) Notwithstanding § 29-32-106, if the defendant's surety is a professional bail bondsmen, the scire facias may be served electronically to the electronic mail address provided by the bondsman pursuant to § 40-11-122(a)(3).

SECTION 12. Tennessee Code Annotated, Section 40-11-301, is amended by deleting the section.

SECTION 13. Tennessee Code Annotated, Section 40-11-303(a), is amended by deleting the language:

Every professional bondsman licensed to do business in this state shall, not later than January 31 and July 31 of each year, file with the clerk of the circuit or criminal court of each county in which the bondsman is furnishing bail or bonds securing costs and fines, etc., a report of the bondsman's assets and liabilities as of the preceding December 31 and June 30, respectively. This report shall show in detail:

and substituting the language:



Every professional bondsman licensed to do business in this state shall, within twenty (20) days following the conclusion of the quarterly periods ending March 31, June 30, September 30, and December 31, file with the department and the clerk of the circuit or criminal court of each county in which the bondsman is furnishing bail or bonds securing costs and fines, etc., a report of the professional bondsman's assets and liabilities as of the preceding quarter. The report must show in detail:

and is further amended by adding the following as new subdivisions:

- ( ) The amount of tax remitted to this state;
- ( ) The total number of bonds written;
- ( ) The number of contractors, if any, utilized by the professional bondsman;
- ( ) The number and amount of escrow payments from clients that have been accepted by the professional bondsman;

SECTION 14. Tennessee Code Annotated, Section 40-11-303(a)(2)-(7), is amended by deleting the words "bondsman" and "bondsman's" wherever they appear and substituting the words "professional bondsman" and "professional bondsman's", as applicable.

SECTION 15. Tennessee Code Annotated, Section 40-11-305, is amended by deleting the words "bondsman" and "bondsman's" wherever they appear and substituting the words "professional bondsman" and "professional bondsman's", as applicable.

SECTION 16. Tennessee Code Annotated, Section 40-11-305, is further amended by designating the existing language as subsection (a) and adding the following as a new subsection:

A judge who conducts an inquiry into the insolvency of a professional bondsman under subsection (a) and finds the professional bondsman to be deficient shall submit the results of any investigation, appraisal, and report upon the value and extent of a professional bondsman's assets and liabilities to the department within seven (7) calendar days of the completion of the inquiry.

SECTION 17. Tennessee Code Annotated, Section 40-11-306, is amended by deleting the section and substituting:

(a) If, after its investigation, the court finds the professional bondsman:

(1) Is insolvent;

(2) Is not financially able to discharge the obligations of the professional bondsman's liabilities as surety;

(3) Has failed, refused or neglected to make the quarterly reports of assets and liabilities as required in § 40-11-303;

(4) Has made and filed false quarterly reports; or

(5) Has failed to furnish the court with information touching upon solvency, when called for;

then the court may order that the professional bondsman be prohibited from executing bonds, bail, or other undertakings as surety in the court until the court becomes satisfied that the professional bondsman has complied with this part or the orders of the court, or that the professional bondsman is again financially solvent, and the court shall impose any other reasonable limitation on the total liability of the professional bondsman's undertakings in the court.

(b) In addition to the limitations imposed under subsection (a), the department may suspend or revoke the professional bondsman's authority to practice bail bonding in this state upon its review of the findings of the investigation by the court. A person whose authority to practice bail bonding has been suspended or revoked under this subsection (b) may appeal such action by the department pursuant to § 40-11-125.

SECTION 18. Tennessee Code Annotated, Section 40-11-316, is amended by deleting subsection (f).

SECTION 19. Tennessee Code Annotated, Section 40-11-317(a), is amended by deleting the subsection and substituting the following:

(a)

(1) In addition to any other qualifications required by law, a person seeking to become a professional bondsman shall:

(A) File a petition or license application and an application for a certificate of registration with the department, and must attach an affidavit setting forth the person's criminal history, if any. If the affidavit is found to be inaccurate, the applicant is immediately disqualified as a professional bondsman; and

(B) Supply a fingerprint sample and submit to a state criminal history background check and investigation to be conducted by the Tennessee bureau of investigation and a national criminal history background check and investigation to be conducted by the federal bureau of investigation. The professional bondsman shall be responsible for any fees for the criminal history background check.

(2) The Tennessee bureau of investigation shall submit the results of the criminal background check to the clerks of all courts in which the professional bondsman is qualified and to the department.

SECTION 20. Tennessee Code Annotated, Section 40-11-319(a), is amended by deleting:

shall notify, in writing, within seventy-two (72) hours of the arrest, the court or courts in which the professional bondsman is qualified

and substituting:

shall notify, in writing, within seventy-two (72) hours of the arrest, the department and the court or courts in which the professional bondsman is qualified

SECTION 21. Tennessee Code Annotated, Section 40-11-319(c), is amended by deleting the subsection and substituting the following:

Upon receipt of the notice, the department or court may proceed in accordance with § 40-11-125 if it believes such action is warranted.

SECTION 22. Tennessee Code Annotated, Section 40-11-319(d), is amended by deleting the subsection and substituting the following:

Failure to comply with this section results in an automatic suspension of the professional bondsman until the department conducts a hearing pursuant to § 40-11-125(c), or until the criminal charges against the professional bondsman are resolved.

SECTION 23. Tennessee Code Annotated, Title 40, Chapter 11, Part 3, is amended by adding the following as a new section:

**40-11-314.**

(a) On or after January 1, 2023, a person shall not operate as a professional bondsman in this state unless the person is registered with the department under this section.

(b)

(1) The department, in consultation and cooperation with members of the judiciary in this state, shall promulgate rules for the regulation of professional bondsmen that are reasonably necessary to carry out this chapter, including, but not limited to, the following:

(A) Implement and administer the registration program created by this section, including, but not limited to, the establishment of adequate registration and renewal fees to cover the cost of implementing and administering the registration program for professional bondsmen;

(B) Establish procedures for handling disciplinary matters involving professional bondsmen registered under this section and for persons engaged in the unauthorized practice of bail bonding;

(C) Establish the standards of practice and qualifications for the issuance of a certificate of registration for professional bondsmen under this section. Such standards and qualifications include, but are not limited to:

(i) Beginning January 1, 2024, the completion of twenty (20) hours of initial training, which shall include instruction on bail bonding, conflict resolution, apprehension instruction, and Tennessee criminal law;

(ii) Obtaining an enhanced handgun carry permit, pursuant to § 39-17-1351, if the professional bondsman wishes to carry a firearm while performing the professional bondsman's duties;

(iii) The completion of an end-of-course review of the applicant's knowledge of all relevant subject matter pertaining to bail bonding; and

(iv) Procedures to require professional bondsmen to submit to criminal history background checks in accordance with § 38-6-109;

(D) Establish any other procedures deemed necessary by the department for the supervision of professional bondsmen registered under this section; and

(E) Establish state-certified continuing education programs for professional bondsmen to be administered by approved third-party contractors under part 4 of this chapter.

(2) The rules must be promulgated in accordance with this chapter and the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) A person eighteen (18) years of age or older may apply for a certificate of registration to engage in the practice of bail bonding.

(d) A certificate of registration expires two (2) years from the date of the registration or renewal.

(e) A registered professional bondsman shall list each place of business within this state with reference to its specific location upon registration and upon subsequent renewals of the registration.

(f) Included on each registration and renewal form must be a section in which the registrant declares, under penalty of perjury pursuant to § 39-16-702(a)(3), whether the registrant has ever been convicted of a violation of this chapter or of any other criminal offense, which must be disclosed on the application.

(g) A registrant who has been convicted of a violation of this part is prohibited from registering under this chapter for five (5) years from the date of conviction.

(h) The department shall create and keep up to date a registry of names of all persons registered as professional bondsmen and the jurisdictions the persons are authorized to practice in, along with a separate list of names of persons who have been disciplined by the department in the previous five (5) years for violating this chapter. The department shall post and maintain the registry on the department's website.

(i) Notwithstanding any law to the contrary, a registration issued pursuant to this section expires upon notification to the department that the registrant is no longer in business at the registered location.

SECTION 24. Tennessee Code Annotated, Section 40-11-401, is amended by deleting the section and substituting the following:

Each professional bondsman or professional bonding agent must obtain twelve (12) hours of continuing education credits during each twelve-month period on or before January 1 of each calendar year, beginning on January 1, 2024. A professional bondsman or agent that carries a firearm while performing the bondsman's or agent's duties must apply for and maintain an enhanced handgun carry permit, pursuant to § 39-17-1351. Any firearm training completed by the bondsman or agent for the enhanced handgun carry permit shall not count toward the twelve (12) hour requirement required by this section.

SECTION 25. Tennessee Code Annotated, Section 40-11-402, is amended by deleting the section and substituting the following:

Beginning on January 1, 2024, each agent shall file annually, along with the first quarterly report as described in § 40-11-303, a certificate of compliance of continuing education with the department, who shall then forward a copy of the report to the clerk of the criminal or civil court of each county in which the agent is furnishing bail or bonds securing costs and fines. This certificate must show in detail the names, locations, dates, and hours of each course attended, along with the signature of the agent attesting that all continuing educational requirements have been completed.

SECTION 26. Tennessee Code Annotated, Section 40-11-403, is amended by deleting the section and substituting the following:

If a bail bondsman does not obtain the required twelve (12) continuing education hour credits within each twelve-month period as described in § 40-11-401, and does not have the necessary certificate of compliance filed with the department at the time of renewal, the department shall notify the bail bondsman by certified mail that the bail bondsman is not in compliance with the continuing education requirements of this part along with the number of hours the bail bondsman lacks to be in compliance. If the bondsman has not furnished the department with a certificate of compliance with continuing education requirements within sixty (60) days of receiving the notice of noncompliance, the court shall suspend the bail bondsman from furnishing bail or bonds securing costs and fines, and the department shall remove the bail bondsman's name from the approved list of qualified and approved bail bondsmen, as described in § 40-11-124, until the bail bondsman completes the continuing education credits and properly files the required certificate with the department. Any disciplinary action taken against a bail bondsman under this section must be posted to the registry on the department's website in accordance with § 40-11-314(i) within five (5) business days of the time such action is taken.

SECTION 27. Tennessee Code Annotated, Section 40-11-404, is amended by deleting subsections (a) and (b), substituting the following, and redesignating the remaining subsection accordingly:

(a) The department shall approve one (1) or more third-party contractors, which may include a professional association related to bail bonding, to provide all continuing education courses and issue certificates of compliance to certify attendance of the agents to the clerks of the courts. The department shall ensure that continuing education courses are available in each grand division. The certificates shall be prepared and delivered to all agents who have completed the continuing education courses at the completion of the end of the course review conducted by the continuing education provider. In no event shall a certificate be issued to an agent who has not completed the attendance requirements for that calendar year.

SECTION 28. Tennessee Code Annotated, Title 40, Chapter 11, Part 3, is amended by adding the following section:

(a) The practice of bail bonding as established under this chapter and the regulation of the profession by the department of commerce and insurance must be reviewed in conjunction with the audit of the department by the comptroller of the treasury in accordance with the Tennessee Governmental Entity Review Law, compiled in title 4, chapter 29.

(b) Every two (2) years, the department shall conduct a random review of at least ten percent (10%) of certificates of compliance prescribed under § 40-11-402.

SECTION 29. The department of commerce and insurance is authorized to promulgate rules to effectuate the purposes of this act. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 30. For the purpose of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect



January 1, 2023, the public welfare requiring it, and applies to bond orders entered on or after that date.